

Based upon this information Respondent determined that Petitioner had violated N.C.

Gen. Stat. § 19A-30(3):

Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

WHEREAS, the Respondent contends that Petitioner failed to comply with the following minimum standards applicable to animal shelters:

02 NCAC 52J .0103 INSPECTION OF RECORDS

All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers shall make all required records available to the director or his authorized representative on request, during the business and cleaning hours listed on the license application. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year after the animal is released.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, turn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

WHERE AS, the Respondent exercised his authority to impose a civil penalty pursuant to

G.S. § 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

WHEREAS the parties desire to resolve this matter without further litigation.

NOW THEREFORE, the parties agree as follows:

1. Petitioner agrees that, when Respondent files this Agreement and Consent Order with the assigned Administrative Law Judge (ALJ) of the N.C. Office of Administrative Hearings, and said ALJ signs and files this Agreement and Consent Order, this Agreement and Consent Order shall constitute a full and final dismissal of the above-captioned matter, with prejudice.
2. Petitioner further agrees that the agreements, promises and commitments set forth below constitute full and fair consideration for resolution and settlement of its petition before the North Carolina Office of Administrative Hearings in the matter captioned above.
3. Petitioner has hired a part-time administrative assistant to work in the CCAS facility on November 1, 2011. Said employee shall receive formal training in working with veterinary care records, in recognizing common illnesses and injuries in animal shelters, and in determining when an animal needs veterinary care to stabilize those illnesses or injuries. Respondent's Director of Animal Welfare, J. Lee Hunter, DVM, shall assist with providing a training syllabus and resources for this training and the Petitioner shall provide said training listed in the training syllabus.

4. The Petitioner has entered into a formal service agreement with a licensed veterinarian for provision of providing veterinary care to the animals in the shelter. Said agreement is hereby attached and incorporated within this settlement agreement by reference.

5. The Petitioner's Board of Commissioners has approved an operating line item budget amendment on December 5, 2011, to add to Petitioner's annual operating budget a line item in the amount of seven hundred fifty dollars (\$750.00) specifically for veterinary care for the animals in the CCAS shelter facility in the current fiscal year. An excerpt from the Board's minutes reflecting said action is attached hereto and incorporated by reference.

6. In consideration of Petitioner's having budgeted the sum of seven hundred fifty dollars (\$750.00) specifically for veterinary care for the animals in the CCAS shelter facility in the current fiscal year, the Respondent agrees to reduce the civil penalty assessed against the Petitioner to two hundred fifty dollars (\$250.00). The Petitioner will pay the sum of two hundred and fifty dollars (\$250.00) within thirty days of the date this Agreement has been signed by the ALJ and filed with the Clerk of the N.C. Office of Administrative Hearings.

7. The persons signing this Agreement represent that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties, the parties represent to each other that they have full power and all requisite authority to execute and perform this Agreement.

8. The parties agree to act in good faith in the implementation of this Agreement.

9. The parties agree to bear their own attorneys fees and costs.

10. It is understood between the parties that this Agreement contains the entire

agreement between the parties hereto regarding the matters set forth, and it supersedes all previous negotiations, discussions and understandings regarding such matters. Terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.

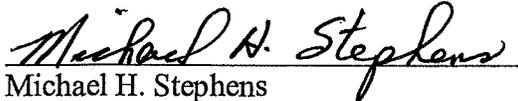
11. The effective date of this Agreement will be the date on which it has been executed by all parties as shown on the signature lines below.

12. North Carolina law shall govern the interpretation and enforcement of this Agreement.

IN TESTIMONY WHEREOF, the parties have set their hands and seals on the dates

indicated below:

FOR PETITIONER


Michael H. Stephens
County Attorney, Columbus County

Date: January 23, 2012



William Clark
Columbus County Manager

Date: 1/23/12

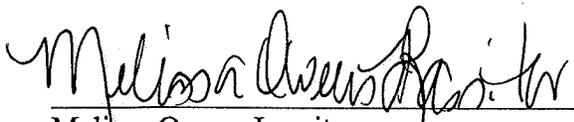
FOR RESPONDENT:


Barry H. Bloch
Assistant Attorney General
N.C. Department of Justice
ATTORNEY FOR RESPONDENT

Date: 25 JAN 2012


Dr. David T. Marshall, State Veterinarian
North Carolina Department of Agriculture & Consumers Services

Date: 1/25/12


Melissa Owens Lassiter
Administrative Law Judge Presiding

Date: 1/31/12

Filed: 1/31/12